held that although the courts of the plaintiff's domicile have jurisdiction of that party's status as of a *res*, the fact that the other party's status is necessarily concerned renders the proceeding a proceeding *in personam* to the extent of making actual notice of the pendency of the suit a necessity when such notice is possible. *Davenport* v. *Davenport*, 58 Atl. Rep. 535 (N. J. Ch.). Although it is difficult to support this rule as a requirement for jurisdiction, a distinction certainly exists between divorce proceedings and other proceedings *in rem*, and on grounds of public policy such a requirement by legislation in each state might seem desirable.

In the absence of any such legislation, however, the theory which seems based on the soundest reasoning makes no requirement of personal notice to the non-resident. Jurisdiction of the status of one of the parties is the only essential. It must be obvious that every sovereignty has power to determine the status of its own citizens, and that this power cannot be altered by the fact that the nature of the marriage relation is such that it is terminated by changing the status of one of the parties. In other words, divorce proceedings, in so far as they affect the status of the domiciled citizen, are proceedings *in rem*,[3] and all that is necessary to give them validity is that they shall not be taken without due process of law. With this qualification, as in the case of other actions *in rem*, the laws regulating the procedure and providing for substituted service may vary in the different states; and in every case in which the plaintiff was actually domiciled in the state rendering the decree, the courts of other states, it is submitted, should inquire only whether the provisions of the local law for substituted service have been fully complied with. This view, which is supported by the authority[4] of some decisions and of some text-writers, seems likely to prevail with the Supreme Court of the United States; for in some very weighty *dicta*[5] that tribunal has declared in effect that each state has power to prescribe the conditions on which divorce proceedings may be commenced and carried on within its territory.

DOUBLE JEOPARDY. — The Supreme Court of the United States has recently enforced the rule that one trial, save in certain exceptional cases, constitutes one jeopardy, and that a defendant, after a trial in one court, is protected by constitutional or common law prohibitions of double jeopardy, from being again tried for the same offense. *Kepner* v. *United States*, 24 Sup. Ct. Rep. 797. Mr. Justice Holmes, dissenting, contends that, within the meaning of the Constitution, there is but one jeopardy in one entire cause as carried through to its termination in a court of last resort. This interpretation, forbidding only a trial on a new and independent indictment for an offense for which the defendant has already been tried, enables an appeal at the instance of either party. Arguing that in regard to an appeal the rights of the prosecution and of the prisoner should be identical, he declares insupportable the theory of waiver, which justifies an appeal by the prisoner only. He believes a man cannot waive so fundamental a constitutional right as the protection against double jeopardy.

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[3] *In re* Newman, 75 Cal. 213.

[4] Thompson *v.* State, 28 Ala. 12.

[5] See Pennoyer *v.* Neff, 95 U. S. 714; Cheely *v.* Clayton, 110 U. S. 701; Cool., Const. Lim., 6th ed., 499; 2 Bishop, Marriage, Divorce, and Separation § 152.

Although it may be difficult to square with strict rules of logic the prevailing theory of double jeopardy, and although legal technicalities are required to explain some of its operations,[1] yet it is to be remembered that the basis of the theory is not the doctrine of *res judicata*, but the protection of the individual from harassing prosecutions. The double jeopardy of the Constitution is in the main the double jeopardy of the common law at the time of the adoption of that instrument, and seems to bear the construction given it by the majority opinion. Perhaps we have outgrown the necessity of such protection as it gives against the prosecuting officers; but except where there have been statutory changes in states whose constitutions admit of them,[2] the prosecution cannot appeal, and an appeal by the prisoner is dependent upon a waiver.[3]

Whether a waiver of a constitutional or common law right is to be allowed should depend upon the purpose of that right and upon principles of public policy. Thus, while courts often refuse to permit a waiver of fundamental rights in which the public has an interest as essential for the protection of life and the proper conduct of trials, yet where the waiver results in nothing but benefit to the accused it is often allowed.[4] Because a waiver, in capital cases, of jury trial,[5] or of the legal number of jurors,[6] or of presence at the trial,[7] might result in capital punishment at the instance of an incompetent tribunal, it is forbidden. But, on the other hand, an accused may waive his right not to testify against himself, or the right of being confronted with witnesses,[8] or the right to a copy of the indictment,[9] all of which are intimately connected with due process of law. Since a waiver of double jeopardy in case of conviction cannot injure the accused and may be for his great advantage in securing a proper trial and perhaps acquittal, no reason arising from public policy or from the purpose of the privilege would seem to forbid its exercise.

THE DESIRABILITY OF A SINGLE COURT OF PATENT APPEALS. — To relieve congestion in federal litigation, the circuit courts of appeal were established, and, subject only to the power of review on *certiorari* by the Supreme Court, were given final jurisdiction in patent cases. The creation of nine appellate courts, with no common superior as to patent cases, naturally resulted in a conflict of decisions upon questions regarding the same patent. Thus the seventh circuit refused to adopt a decision of the eighth circuit upholding the validity of a patent;[1] and on *certiorari* the Supreme Court declared that no obligation rests on one circuit to follow an adjudication in another.[2] Consequently, a circuit court of New York, in a recent suit for infringement, when confronted with a decision of

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[1] See Mixon *v.* State, 55 Ala. 129.
[2] See State *v.* Lee, 65 Conn. 265.
[3] United States *v.* Sanges, 144 U. S. 310.
[4] 6 Crim. L. Mag. 182.
[5] Harris *v.* People, 128 Ill. 585.
[6] Thompson *v.* Utah, 170 U. S. 343, 353.
[7] Hopt *v.* Utah, 110 U. S. 574.
[8] Shular *v.* State, 105 Ind. 289, 298.
[9] Lisle *v.* State, 6 Mo. 426.

[1] See Mast, Foos & Co. *v.* Dempster Mill Mfg. Co., 82 Fed. Rep. 327; Stover Mfg. Co. *v.* Mast, Foos & Co., 89 Fed. Rep. 333.
[2] Mast, Foos & Co. *v.* Stover Mfg. Co., 177 U. S. 485.